

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

Docket No. EPCRA-08-2004-0004

IN THE MATTER OF:)	
)	
)	
Wasatch Propane)	COMPLAINT AND NOTICE OF
201 West 2700 South)	OPPORTUNITY FOR HEARING
South Salt Lake City, UT)	
84115-3016)	
)	
Respondent)	
)	

ADMINISTRATIVE COMPLAINT

I. JURISDICTION

1. This civil administrative enforcement action ("Complaint") is authorized by Congress in section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045, also known as the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"). EPA regulations authorized by the statute are set out in part 370 of title 40 of the Code of Federal Regulations. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 CFR part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has violated Section 312 of EPCRA, U.S.C. § 11022, and proposes the assessment of a civil penalty as more fully explained below.

II. NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge to disagree with (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the

proposed penalty.

5. To disagree with the complaint, and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk, 999 18th St., Suite 300, Denver, Colorado 80202-2466, within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.

III. QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. If Respondent chooses to resolve this proceeding by paying the specific penalty proposed in this complaint, payment must be made, within thirty (30) calendar days of receipt of this complaint, by sending a certified or cashier's check payable to "Treasurer, United States of America," in care of:

U. S. EPA, Region 8
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

as follows: a copy of the check must be mailed simultaneously to the attorney listed below.

IV. SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other

questions, contact Dana J. Stotsky at 1-800-227-9441, extension 6905; or the address below. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

1. Section 312 of EPCRA, 42 U.S.C. §11022, requires regulated parties that store chemicals in excess of established threshold amounts file and submit to designated state and local offices annual inventory reports ("Tier II's").
2. Respondent is Wasatch Propane located at 201 West 2700 South, South Salt Lake City, Utah.
3. Respondent is a "person" as that term is defined by section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
4. Respondent is an owner or operator of a "facility" as that term is defined in section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
5. Respondent is a wholesaler of propane and stores in excess of 10,000 pounds of propane at 201 West 2700 South, South Salt Lake City, Utah.
6. Respondent was required to submit an inventory report for propane to the Local Emergency Planning Committee (LEPC) and the State Emergency Response Commission (SERC) by March 1, 2004.
7. On June 21, 2004, the Salt Lake County LEPC issued a Notice of Violation and Order of Compliance to Wasatch Propane for failure to provide inventory information to the LEPC by March 1, 2004.
8. As of September 1, 2004, Wasatch Propane had not responded to the NOV issued by the LEPC.
9. This complaint alleges that Respondent failed to file reports as required under Sections 312 of EPCRA, 42 U.S.C. § 11022.
10. All allegations above are incorporated by this reference as if fully set forth in the following count.

COUNT 1

11. Propane (CAS number 74-98-6) is a hazardous chemical as defined by 29 C.F.R. § 1910.1200(c).
12. At all times relevant to this Complaint, the facility was required to prepare or have available a material safety data sheet ("MSDS") for each hazardous chemical used and stored at the facility. This requirement is found under the Occupational Safety and Health Act of 1970 and the regulations promulgated under that Act.
13. Respondent, as a facility, is required to file a Tier II inventory report for hazardous chemicals it stored in excess of established thresholds. Such thresholds are located at 40 CFR 370.20(b).
14. Respondent failed to file a Tier II inventory report for reporting year 2003 for propane stored in excess of established threshold.
15. Respondent's failure to file a Tier II inventory report for propane constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022.

PROPOSED CIVIL PENALTY

Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c), as amended, authorizes EPA to assess a civil penalty of \$27,500 for each violation of section 312. Based upon the violation cited in this Complaint, and, to the extent known, upon the nature, circumstances, extent and gravity of the violations alleged, Respondent's history of prior violations of EPCRA, and degree of culpability, as set forth in the "Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-To-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act dated September 30, 1999 (enclosed as Complainant's Exhibit #1). EPA proposes to assess the following civil penalty for the violation described above:

COUNT	VIOLATION	PROPOSED PENALTY
1	Failure to submit Tier II for propane stored in 2003	<u>\$13,751</u>

TOTAL PROPOSED PENALTY	<u>\$13,751</u>
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The reasoning behind the proposed penalty in this matter is detailed in the penalty calculation narrative and worksheet, incorporated herein by reference and enclosed as Complainant's Exhibit 2.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 13 September 04 By: David J. Janik
Michael T. Risner, Director
David Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 9/13/04 By: SIGNED
Martin Hestmark, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: Sept. 12, 2004 By: SIGNED
Dana Stotsky, Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

IN THE MATTER OF:

WASATCH PROPANE,
EPA Docket No. 08-2004-0004

CERTIFICATE OF SERVICE

I hereby certify that the attached COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING dated was served as follows:

The original and one copy was hand carried to:

Regional Hearing Clerk
U. S. EPA, Region 8 (8RC)
999 18th Street, Suite 300
Denver, CO 80202-2405

A copy was sent via CERTIFIED MAIL, RETURN RECEIPT REQUESTED, postage prepaid, to:

Becky B. Taylor
Registered Agent for
Wasatch Propane
201 W. 2700 South
South Salt Lake, UT 84115-3016

9/14/04
Date

SIGNED
Ms. Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENT, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON SEPTEMBER 14, 2004.